

LAW OFFICES

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January 4, 2020

MEMO ENDORSED

The Application is granted.

SO ORDERED:

Paul G. Gardephe

Paul G. Gardephe, U.S.D.J.

Dated: Jan. 6, 2020

Via ECF

Honorable Paul G. Gardephe
United States District Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: United States v. Avenatti, No. S1 19 Cr. 373 (PGG)

Request for 3 day-adjournment, until January 9, 2020,
to Respond to Nike's Motion to Quash Subpoenas
(Dkt. Nos. 112, 114-15)

Dear Judge Gardephe:

We write to request a three-day adjournment, until January 9, 2020, to respond to the motion of non-party Nike to quash subpoenas to testify (Dkt. Nos. 114-15). This morning, in a conference call with government counsel, the government advised us that it intends to produce an additional 4,000 (approx.) pages of Nike-related documents by Monday, January 6, 2020. Thus, we are seeking additional time to expeditiously review the additional Nike documents before filing our response. We provide the following background.

In September 2017, Nike was served with a federal grand jury subpoena in connection with the USAO-SDNY's NCAA criminal investigation. Between October 2017 and May 2018, Nike produced more than 11,000 pages of documents to the USAO-SDNY. In March 2019, Mr. Avenatti approached Nike on behalf of Gary Franklin—a former coach of a Nike-sponsored Elite Youth Basketball (EYBL) team, the California Supreme—to settle Franklin's claims relating to his contract with Nike. Nike reported Mr. Avenatti to the USAO-SDNY in connection with an alleged "extortion" plot, and Mr. Avenatti was arrested on March 25, 2019. After Mr. Avenatti's arrest, and as late as July 12, 2019 – nearly 21 months after being served with the grand jury subpoena -- Nike produced an *additional* 6,300 pages (approx.) of documents. In total, as of July 12, 2019, Nike had produced more than 17,800 pages to the USAO-SDNY.

On August 6, 2019, in response to a Rule 16 / *Brady* / *Giglio* demand by the defense for disclosure of the entirety of Nike's production to the USAO-SDNY, the government produced to the defense 2,550 pages from the Nike production. According to government counsel, these 2,550 pages were selected by running search terms that included "Gary Franklin" and "California Supreme" on the database of documents that Nike had produced to the grand jury. The documents corroborated what Coach Franklin had told Mr. Avenatti about

the involvement of Nike executives – several of whom are the subject of the subpoenas -- in a scheme to funnel money to high school players, their families and/or handlers. To be sure, the documents showed that the conduct extended far beyond Coach Franklin and the California Supreme.

This morning, Saturday, January 4, 2020, we had a conference call at the request of government counsel. They candidly advised us that, when the USAO-SDNY ran its initial searches on the Nike production database using the terms “Gary Franklin” and “California Supreme” and produced the documents on August 6, 2019, they were unaware that more than 6,000 pages of documents that Nike had produced in April/July 2019 had not yet been loaded into the government’s discovery database. According to government counsel, when they recently ran those same search terms on these additional 6,000 plus pages, the search yielded an additional 4,000 pages, which the government is endeavoring to produce to us by Monday, January 6, 2020.

We believe these additional 4,000 pages will bear directly on Franklin’s “claim of right,” Nike’s bias, and whether Nike has (or not) “fully cooperated” with the government’s investigation as it now claims. (Dkt. No. 115:4). First, they all apparently relate in some way to Gary Franklin and California Supreme, both of whom are at the heart of this case. Second, they substantially outnumber the government’s initial production of 2,550 pages on August 6, 2019. Third, the majority of documents produced by Nike after Mr. Avenatti’s arrest (4000/6300) – 21 months after the grand jury subpoena was served -- pertained to Gary Franklin and California Supreme. For reasons we do not yet know for certain, these documents were not produced by Nike until after Mr. Avenatti was arrested for demanding an internal investigation as a component of the settlement of Coach Franklin’s claims.

For the foregoing reasons, we are requesting an opportunity to review the additional 4,000 pages, as expeditiously as possible, before filing our response to Nike’s motion to quash. We respectfully request an additional three (3) days. Thank you for your consideration of this request.

Respectfully,



Scott A. Srebnick
Jose M. Quinon
E. Danya Perry